

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILBERT ROGERS, JR.,

Petitioner,

No. CIV S-03-2638 MCE DAD P

vs.

ANTHONY MALFI, Warden,

Respondent.

ORDER

Petitioner has requested the appointment of counsel. Petitioner has been informed that there is no absolute right to appointment of counsel in habeas proceedings, see Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996), and that counsel may be appointed at any stage of the case "if the interests of justice so require," 18 U.S.C. § 3006A; Rule 8(c), Fed. R. Governing § 2254 Cases. The court does not find that the interests of justice require appointment of counsel at this stage of the case.

Petitioner has also requested an evidentiary hearing. Petitioner's motion for an evidentiary hearing is premature. The court shall make a determination as to whether an evidentiary hearing is required after the answer has been filed and transcript and records have been reviewed. Rule 8, Fed. R. Governing § 2254 Cases. Therefore, petitioner's motion for an evidentiary hearing is denied.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Petitioner's February 1, 2007 motion for appointment of counsel is denied; and

3 2. Petitioner's request for an evidentiary hearing is denied.

4 DATED: February 13, 2007.

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7 DALE A. DROZD  
8 UNITED STATES MAGISTRATE JUDGE

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